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New York

President: Mr. D'Escoto Brockmann ..... (Nicaragua)

The meeting was called to order at 10.25 a.m.

Agenda item 71 (*continued*)

Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law

Draft resolution (A/63/L.2)

The President (*spoke in Spanish*): I give the floor to the Minister for Foreign Affairs of Serbia, His Excellency Mr. Vuk Jeremić, to introduce draft resolution A/63/L.2.

Mr. Jeremić (Serbia): It is my honour and pleasure to introduce the draft resolution proposed by the Republic of Serbia contained in document A/63/L.2. My presence here today as Foreign Minister of the Republic of Serbia signifies the importance that my country assigns to this issue.

On 17 February 2008, the provisional institutions of self-government of Serbia's southern province of Kosovo and Metohija unilaterally declared independence. Our democracy responded with maximal restraint. We ruled out the use of force and the imposition of economic sanctions against the breakaway province. Serbia decided to defend its sovereignty and territorial integrity through diplomacy and international law.

We have chosen to seek an advisory opinion from the International Court of Justice (ICJ) on the legality of the unilateral declaration of independence. Today we are turning to the General Assembly to convey that request to the Court, in fulfilment of its powers and functions under the United Nations Charter.

This non-confrontational approach is highly principled and legitimate. It will serve to reduce tensions in the region and facilitate our efforts at reconciliation.

The Republic of Serbia believes that sending this question to the Court would prevent the Kosovo crisis from serving as a deeply problematic precedent in any part of the globe where secessionist ambitions are harboured.

We also believe that the Court's advisory opinion would provide politically neutral, yet judicially authoritative, guidance to many countries still deliberating how to approach unilateral declarations of independence in line with international law.

Lastly, we believe that recourse to the Court would strengthen the rule of law in international relations and make the proposed course of action a symbol of the world community's resolve to take the United Nations Charter as its guide.

Supporting this draft resolution would also serve to reaffirm a fundamental principle: the right of any Member State of the United Nations to pose a simple, basic question on a matter it considers vitally important to the Court. To vote against it would be in effect a vote to deny the right of any country to seek — now or in the future — judicial recourse through the United Nations system. To vote against it would also mean

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accepting that nothing can be done when secessionists in whichever part of the globe assert the uniqueness of their cause and claim exception to the universal scope of the international legal order.

My country would like to extend our appreciation to those that, while not currently persuaded of the utility of the proposal, have decided to engage themselves in this question, acknowledging that our draft resolution addresses important issues of international law.

All Member States have on numerous occasions confirmed their confidence in the Court as the principal judicial organ of the United Nations. We must therefore have full confidence that the Court will perform its duty in an exemplary fashion without any special directives.

The question posed is amply clear and refrains from taking political positions on the Kosovo issue. The Court's response, in the form of an advisory opinion, will be based on international law, in accordance with the Court's Statute and Rules of Procedure. Article 66 of the Statute gives a clear indication of the procedures utilized by the Court. No additional instructions by the General Assembly are appropriate.

We believe that the draft resolution in its present form is entirely non-controversial. It represents the lowest common denominator of the positions of the Member States on this question, and hence there is no need for any changes or additions. Let us adopt it and allow the Court to act freely and impartially within the framework of its competencies. We are confident that the Court will know what to do, and that it will take into account the opinions of all interested Member States and international organizations. We hold that the most prudent way to proceed today is to adopt our draft resolution without opposition, in the same way that it was decided at the General Committee to include this item in the agenda.

The Republic of Serbia's steadfast pursuit of this peaceful course of action is a demonstration of our firm commitment to the international system that we have all helped to build.

History has placed the problem of Kosovo's unilateral declaration of independence before us all. The choice of whether to act through law is upon us. By acting concertedly in support of our draft resolution, we will have come together to help restore the sacrosanct character of the Charter of the United Nations, the document that binds us to one another as a world community of sovereign equals. And, by seizing the present moment, we will have begun to further enhance the enduring benefit and honour of the founding principles of the United Nations.

Sir John Sawers (United Kingdom): Colleagues will be aware of the letter I wrote to the President on 1 October (A/63/461), enclosing a note of issues raised by the Serbian request for the General Assembly to seek an advisory opinion from the International Court of Justice on the legality of Kosovo's declaration of independence.

Let me start by making clear that the United Kingdom is a strong supporter of the International Court of Justice. We have for many years accepted the Court's compulsory jurisdiction. We are one of only 65 States with a current optional clause declaration, under article 36 (2) of the Court's Statute, giving the Court jurisdiction over a wide range of matters. We support the use of the Court by Member States to resolve their disputes and the right of United Nations institutions to seek advisory opinions on questions affecting the performance of their functions.

Why, it might be asked, are we now raising questions about the Serbian request? The reason is that the Serbian request is primarily for political rather than legal reasons. It is designed to slow down Kosovo's emergence as a widely recognized independent nation, playing its part in the international institutions of the world. Many members of the United Nations emerged into independence during what, at the time, were controversial circumstances. These circumstances normalize over time and the clock of history is rarely turned back. Kosovo's independence is and will remain a reality. The Government of Serbia will have to decide how it comes to terms with that reality.

Kosovo's independence has now been recognized by 22 out of 27 member States of the European Union, an organization that Serbia aspires to join. We too want to see Serbia as a member of the European Union. To that end, Serbia will need to work constructively with its future European Union partners to maximize stability in the region, including in Kosovo, so that we can achieve our goal of bringing the whole region and its peoples to a stable and more prosperous future.

In Security Council debates on this issue, I have set out that the United Kingdom is confident in its legal position as a State that has recognized the independence of Kosovo following the final status process, which was conducted pursuant to Security Council resolution 1244 (1999).

In terms of the draft resolution before us, my delegation regrets that our Serbian colleagues have declined to seek a consensual way forward. They have, on the contrary, decided to push this draft resolution through the General Assembly with minimal debate about the issues. That is not the custom in the General Assembly, and it is regrettable that Serbia has decided to pursue that course. In the light of our reservations on matters of both substance and procedure, the United Kingdom will abstain on this resolution.

If the resolution is adopted, the question will need to be addressed against the background of the full context of the dissolution of Yugoslavia in so far as it affects Kosovo, starting with Belgrade's unilateral decision in 1989 to remove Kosovo's autonomy through to events of the present day.

Serbia complains about the unilateral declaration of Kosovo in February 2008. But it was Serbia that, in a unilateral move of its own, rendered successful negotiations impossible. In November 2006, while the United Nations status envoy was conducting talks, Serbia brought forward a new constitution that unilaterally reasserted control over Kosovo. That constitution was narrowly approved by a referendum. But well over a million Kosovo Albanians, people whom Serbia was by its new constitution claiming as its own, were effectively excluded from voting. And the effect of the constitution was to tie the hands of the Serbian negotiators to the point where they could not even accept a status-neutral proposal put forward by the European Union.

That status-neutral proposal in December 2007 represented the last chance for a negotiated settlement, and it was rejected by Serbia. So, in coordination with many of the countries most closely involved in stabilizing the Balkans, Kosovo's Assembly declared Kosovo independent on 17 February 2008. The declaration committed Kosovo to full implementation of the United Nations envoy's Comprehensive Proposal for the Kosovo Status Settlement, including the most extensive safeguards for minority communities anywhere in Europe, together with international supervision. In the past eight months, 48 countries have recognized Kosovo as a sovereign independent State; and that number is set to grow.

If this draft resolution is adopted, my delegation invites the Court to proceed in accordance with the principle that, without prejudice to the advisory opinion being sought, all parties with an interest, including the Government of Kosovo, should be able to present arguments on an equal footing.

My Government's overwhelming concern in its policy towards the Balkans over this last 18 years has been to provide for peace and stability and to build a basis for long-term prosperity in the region. Those principles continue to guide us today. The people of Serbia have made a strategic choice in their recent election, one that my Government welcomes. We will do what we can to facilitate Serbia's integration into Europe. We will expect in return that the Government of Serbia will cooperate fully with the European Union in achieving stability in the southern Balkans for generations to come. Our disagreement with Serbia over the tactics that it is adopting on this particular issue will not distract us from our strategic objectives that we believe are widely shared and advance the interests of the people of the Balkans as a whole.

Mr. Neritani (Albania): Each and every Member State has the right to operate within our current Charter-defined system and to use the rules of procedure, including even some loopholes, in order to clarify an issue, solve a dispute between parties, remedy a situation and/or seek an opinion. The International Court of Justice is a very well respected body in this regard and we strongly support it.

This institutional right comes together with the responsibility to exercise it objectively and in good faith. This nexus becomes more relevant because the issue at hand involves all of us as Members of this institution. The sense of purpose and the practical utility of this exercise must be based on that equation.

Let us go one small step further. The intentional reduction of the complex issue of Kosovo into a simple aspect, namely, the legal one, is an attempt to establish a situation outside of its context, cutting it away from its root causes. In other words, it attempts to establish a false connection between cause and effect.

The General Assembly deserves the truth and information that are known on the subject. Any

intentional attempt to conceal the facts or to make a presentation based on half-truths is not a good-faith attempt in approaching this issue. Our institution's competence and its ability to take ownership of this issue hinge on a fair approach to this question.

The involvement of the General Assembly membership in this debate must have a purpose. I believe that the General Assembly need not be engaged in a debate aimed at meeting certain bars in the domestic politics of a particular Member State, bars raised artificially because of very painful events in the recent past.

A projected prolongation of the Kosovo recognition process is not in and of itself a good reason and a bona fide purpose for engaging the General Assembly membership in this debate. We have to be engaged and resolve, not freeze or block, certain developments that are proving to have a positive result on the ground for the present and the future.

In its known historical and political developments, Kosovo constitutes a unique case. This is true for each and every person that knows the facts on the ground and views them without any speculation or bias. For the sake of a violent and non-consensual break-up of the former Yugoslavia, a biblical exodus of 1 million Kosovar Albanians and thousands killed and disappeared, including into mass graves, took place only nine years ago. That State-run ethnic cleansing enterprise and genocide was stopped thanks to the intervention of international community, which, entirely legally, administered Kosovo until its declaration of independence.

The potential engagement of the International Court of Justice (ICJ) in this unique case, as it is presented in the draft resolution before us — that is, out of context — and the offering of an opinion based upon an intentionally singled-out element — the legal one — could lay the groundwork for interpretations that could have wider latitude and scale of application. While not anything close to a theoretically established precedent, this would reflect a top-down approach. Kosovo in and of itself is not a precedent. Pushing the envelope on this question by engaging the General Assembly might create a precedent, although a negative one, with potentially bad applications elsewhere.

On another technical matter, the wording "unilaterally declared independence": the word "unilateral" is not a factual representation, but a biased interpretation. The legal act of declaration of independence may have different qualifiers. As the General Assembly is discussing an issue to be referred to the ICJ, biased rhetoric that deviates from a factual representation of the circumstances on the ground is not a good reflection on the competence of the General Assembly.

We respectfully disagree with this attempt, which is logistically legal, but which is in essence a manipulative attempt to stall the process of recognition of Kosovo and to cause as much detrimental effect on the ground as possible. We believe that the Balkans deserve to channel these enormous energies towards building our common future with prosperity for all of us. Old stereotypes of getting even are outdated, everywhere.

We call upon other members to vote against draft resolution A/63/L.2.

Mr. İlkin (Turkey): Peace and stability in the Balkans have always been of the utmost importance for Turkey. In line with this, we are determined to further our relations with all Balkan countries in all fields. In this context, we value the close relations we have with Serbia and believe that that country's welfare and stability are indispensable to the well-being of the greater Balkan region and of Europe.

At the same time, Turkey has historical ties and strong fraternal bonds with the Kosovar people. Turkey was one of the first countries to have recognized Kosovo, and it is our view that this recognition is also consistent with international law. In fact, 48 countries have recognized Kosovo, and that only bolsters that conclusion.

We understand the particular reasons that have led Serbia to seek an advisory opinion from the International Court of Justice (ICJ). However, we do not think that this will help achieve the desired and immediately needed atmosphere of peace, stability and security in the Balkans.

On the other hand, Turkey strongly supports the ICJ as the principal judiciary organ of the United Nations. Therefore, out of respect for the ICJ, Turkey will not challenge the right of Serbia to have recourse to the ICJ and will not participate in the vote.

Ms. DiCarlo (United States of America): After years of war, post-communist transition and deep

hardship and suffering, the people of the Balkans, including those in Serbia and Kosovo, have rejected the destructive nationalism that brought them such misery in the 1990s. They seek a future as integrated, prosperous citizens of Europe.

Under the leadership of a democratically elected, multi-ethnic Government, the Republic of Kosovo today is at peace. The Government in Pristina has scrupulously followed the comprehensive proposal for the Kosovo status settlement developed by the Secretary-General's Special Envoy.

Kosovo has adopted a far-reaching constitution and has enacted 41 pieces of legislation to implement the comprehensive proposal. These include specific provisions which protect the rights of all ethnic minorities as well as the religious and cultural heritage of the population. Kosovo's Government has also acted with vision in seeking strong relations with all its neighbours, including Serbia.

For its part, Serbia is on the path to European integration, having recently signed a Stabilization and Association Agreement with the European Union.

The United States firmly believes that our common concern should be to focus our efforts to help shape this European future for Serbia and Kosovo. Specifically, we are extending economic and political support to both of these countries. We hope they will integrate further into international markets and structures, which will guarantee peace and prosperity for all of the region's peoples.

However, we do not think that the draft resolution proposed by Serbia advances that goal. Let me make clear that the United States offers its full support to the International Court of Justice (ICJ) and its role in providing advisory opinion in appropriate circumstances.

In regard to the specific question before us, on referring the declaration of independence of Kosovo Provisional Institutions of Self-Governance to the International Court of Justice, we respectfully suggest that an advisory opinion on this question is unnecessary and unhelpful. Therefore, the United States will vote against referral.

As a practical matter, Kosovo's independence is irreversible. Forty-eight countries have recognized Kosovo as an independent State, including 22 of the 27 members of the European Union. We are confident that recognition of Kosovo's independence by an ever-increasing number of States is consistent with international law.

We do not think it appropriate or fair to the Court to ask it to opine on what is essentially a matter that is reserved to the judgement of Member States. We ask members to consider the potential consequences if other Members or separatist movements within their countries were to seize upon language, in any opinion the Court might render, to bolster their own claims for or against independence.

Should this draft resolution go forward, the Court will, understandably, have to look at the referred question with extreme care, taking into account the particular context in which the events leading to Kosovo's declaration occurred. Kosovo must be viewed within the context of the violent dissolution of the former Yugoslavia in the 1990s. The policies of that period led the Security Council to adopt resolution 1244 (1999), which authorized the United Nations to administer Kosovo and called for a political process to determine Kosovo's status. After intensive negotiations, the United Nations Special Envoy recommended to the Secretary-General that Kosovo become an independent State. It is also important that the Court hear from the States most directly interested in this matter — Serbia and Kosovo — on an equal basis, as well as from the many other States that can be expected to make contributions to the Court's consideration of the case.

The United States welcomes and supports the remarkable progress made in the Balkan region towards building stable, multi-ethnic democracies and laying the groundwork for growth and development. Although we may disagree with Serbia on the issue before us today, the United States will work closely with Serbia and all other countries in South-Eastern Europe to advance our shared vision of a Europe that is whole, free and at peace.

Mr. Heller (Mexico) (*spoke in Spanish*): I am grateful for the opportunity to express the legal opinion of the Government of Mexico on this important issue.

Draft resolution A/63/L.2, submitted by Serbia, is based on the prerogative, conferred on the General Assembly in Article 96 of the Charter of the United Nations, to request the International Court of Justice to give an advisory opinion on any legal question.

Since the founding of the United Nations, Mexico has been a firm and constant promoter of the principles of justice and international law enshrined in the Charter and of the International Court of Justice, which is the jurisdictional body par excellence for the peaceful resolution of disputes arising from the interpretation of international law.

The rule of law, to which we, the members of the international community, are subject, is possible only if it is equipped with effective jurisdictional mechanisms for the peaceful resolution of disputes arising from specific interpretations or applications of international law. The International Court of Justice, as the principal judicial organ at the international level, makes an invaluable contribution to consolidating the rule of law through its opinions on specific legal issues arising in the exercise of its advisory jurisdiction.

The General Assembly, for its part, also plays an important role in consolidating the rule of law by entrusting to the Court — and thereby strengthening it — specific legal issues on which there is some disagreement. In Mexico's opinion, the initiative and the text of Serbia's request for an advisory opinion are in keeping with the framework established in paragraph 2 of article 65 of the Statute of the International Court of Justice. Likewise, draft resolution A/63/L.2 fully meets the requirements set out in the Charter of the United Nations whereby the General Assembly may request an advisory opinion from the International Court of justice on a specific legal question referred to it.

In the light of all those considerations, Mexico will vote in favour of the draft resolution.

The President (*spoke in Spanish*): We have heard the last speaker in the debate on this item.

We shall now proceed to consider draft resolution A/63/L.2. In that connection, I give the floor to the representative of the Secretariat.

Mr. Botnaru (Department of General Assembly and Conference Management): In connection with draft resolution A/63/L.2, I wish to place on record the following statement of programme budget implications on behalf of the Secretary-General, in accordance with rule 153 of the rules of procedure of the General Assembly.

By draft resolution A/63/L.2, the General Assembly would decide, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to article 65 of the Statute of the Court, to render an advisory opinion on the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

Should the draft resolution be adopted, the Court would proceed to establish the scope of the work arising from the request. Resources have been provided in the programme budget for the biennium 2008-2009 for the Court to provide advisory opinions as requested by organs of the United Nations and specialized agencies. It is anticipated, however, that, owing to the complexity of the question on which the Court is requested in the draft resolution to render an advisory opinion, adoption of the draft resolution is expected to give rise to additional resource requirements.

On the basis of a determination by the Court of the scope of work, a detailed statement of programme budget implications would be submitted to the General Assembly for its consideration during its present session.

The President (*spoke in Spanish*): I shall now call on those representatives who wish to speak in explanation of vote before the voting. May I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

Mrs. Miculescu (Romania): My delegation would like to underline the following before the voting. Compliance with international law is the very essence of our Organization and the matrix on which we strive to build international peace, stability and security. Draft resolution A/63/L.2 contains a question that is fully in line with the simple right of recourse to international law, to which any United Nations Member is entitled to benefit under the Charter itself.

Romania fully trusts the advisory opinions of the International Court of Justice, the main judicial organ of the United Nations, a prominent promoter and guardian of international law. We are absolutely sure that its opinion on the question raised in the draft resolution will assist us in making decisions in the future, in particular when fundamental issues such as the sovereignty and territorial integrity are at stake.

In the light of those considerations, Romania has decided to vote in favour of draft resolution A/63/L.2.

Mr. Mlynár (Slovakia): Slovakia, as a matter of principle, respects the right of every Member State to seek advisory opinions from the International Court of Justice as the principal judicial organ of the United Nations and one of the principal organs of the United Nations. In that context, Slovakia will vote in favour of the General Assembly draft resolution submitted by Serbia that is before us today.

Mr. Arias (Panama) (*spoke in Spanish*): Panama has decided to vote in favour of draft resolution A/63/L.2, whereby the General Assembly would request an advisory opinion of the International Court of Justice concerning the legality of the unilateral declaration of independence by Kosovo, because we believe in the peaceful settlement of disputes. We support the rule of law and believe in the authority, capability and independence of the International Court of Justice. Panama is voting on the understanding that all parties, in particular the authorities of Serbia and Kosovo, will be given the opportunity to express their views before the Court.

While we support the draft resolution being considered, at the same time I wish to make it clear that our support does not affect or predetermine the political decision that Panama may or may not take to recognize the independence of Kosovo.

Mr. Abdelaziz (Egypt): Egypt believes that the agenda item in question should be considered strictly within the legal and judicial context. Our view is based on the following considerations.

First, every Member State has the right to request an advisory opinion of the International Court of Justice and the General Assembly has the responsibility to grant that request in accordance with Article 96 of the Charter. Egypt believes in the importance of the legal and moral values of the Court's judgments and opinions and the important role it has to play in resolving international conflicts with the needed objectivity, independence and neutrality in a manner that would enhance the rule of law at the international level.

Secondly, Egypt is committed to the collective position of the Non-Aligned Movement (NAM) reflected in many NAM documents, the latest of which is the final document of the fifteenth ministerial conference of the Non-Aligned Movement, held in Teheran from 27 to 30 July 2008, in which the Movement

> "Invites also the General Assembly, the other organs of the United Nations and the specialized agencies duly authorized, to request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities".

It is clear, in our opinion, that the question is a legal and not a political issue and thus falls within the purview of the General Assembly in that regard.

Thirdly, strengthening the role of the United Nations and in particular that of the General Assembly when dealing with issues related to sovereignty and territorial integrity, as two of the main principles of the United Nations Charter and of international law, entails recognition of the pivotal role of the International Court of Justice as the principal judicial organ of the Organization. The General Assembly should not shy away from its responsibility to establish the necessary legal and judicial opinions in this case and in any case that entails a dispute in the application of the principles of the Charter or any principles of international law. Therefore, Egypt will vote in favour of the draft resolution submitted by the Republic of Serbia in document A/63/L.2.

Mr. Yáñez-Barnuevo (Spain) (*spoke in Spanish*): As is well known, the Spanish Government believes that respect for international law is the fundamental principle governing the actions of States and international organizations, and in particular the United Nations, in the context of their international relations. Spain has therefore placed that fundamental principle at the core of all its actions in the international arena, while at the same time giving the United Nations an unparalleled leading role in that regard.

It is also well known that the Spanish Government attaches great importance to the correct functioning of the principal organs of the Organization, including the General Assembly and the International Court of Justice, and to interaction among those organs to promote the achievement of the purposes and principles of the United Nations, in accordance with the Charter.

In that regard, we feel that, in the general interest of the Organization and the international community as

a whole, it would be advisable to provide the Assembly with an authorized opinion of the main judicial body of the United Nations on the legal aspects of issues that, such as the present one regarding Kosovo, have been the object of diverse interpretations by Member States.

Moreover, we believe that it will ultimately fall to this Assembly and the other bodies of the United Nations to draw the conclusions they deem appropriate concerning the advisory opinion that the International Court of Justice will pronounce at the proper moment, without, at this stage at least, drawing any preliminary conclusions or conditioning in any way the actions of the main judicial organ of the United Nations, which enjoys full independence and impartiality in accordance with the Charter of the United Nations and its statutes.

Therefore, Spain will vote in favour of the draft resolution submitted by Serbia, contained in document A/63/L.2.

Mr. Mourikis (Greece): As a matter of principle, Greece believes that every State has the prerogative to request an advisory opinion of the International Court of Justice on issues of importance and relevance to international law. We would also like to stress that we recognize and respect the authority and competence of the Court to investigate issues of international law and express views and opinions on such topics.

As regards the draft resolution submitted by Serbia (A/63/L.2) on referring the issue of the unilateral declaration of independence by Kosovo to the International Court of Justice and request that it be examined for its legality in accordance with international law, Greece is of the opinion that such a request is based on international law and practice and we would like to express our support for it.

We believe that the text of that draft resolution is based on the inalienable right of every State to seek the advice and opinions of the most relevant juridical authority within the United Nations system through the approval of the General Assembly.

Therefore, Greece will vote in favour of the draft resolution submitted by Serbia.

Mr. Ripert (France) (*spoke in French*): On 17 February 2008, the Assembly of Kosovo declared the independence of the Republic of Kosovo. That declaration of independence marked the end of a very specific historical sequence — the violent dismemberment of the former Yugoslavia in the 1990s, followed by a long period of international administration under the aegis of the United Nations.

It is also the result of the process of defining Kosovo's status, which was provided for by Security Council resolution 1244 (1999). The common European prospects offered to Kosovo and to Serbia are also a very specific characteristic of the situation. The independence of Kosovo is thus a sui generis case that does not call into question the issues of sovereignty and territorial integrity that lie at the very core of international relations.

In such conditions, on 18 February France decided to recognize the new State, as have 22 of the 27 members of the European Union since then. Since the entry into force of the Constitution on 15 June, moreover, the Republic of Kosovo possesses a legislative framework that conforms to European norms and values and provides a framework for protecting all communities living in Kosovo.

In that context, France marked its disagreement with Serbia's draft resolution (A/63/L.2), which would request an advisory opinion of the International Court of Justice on the legality on the declaration of independence of Kosovo. France fully backs the Court, which is the principal judicial organ of the United Nations, but to us the request for an advisory opinion proposed by Serbia is neither useful, since the situation of independent Kosovo recognized by 48 sovereign States seems to us to be devoid of any legal uncertainties, nor appropriate, since it does not contribute to the necessary easing of tensions and could complicate the European prospects for the western Balkans.

In those conditions, France will abstain in the voting.

To overcome the divisions of the past, Europe offered a European future to the people of the western Balkans. France remains dedicated to that basic goal, which should be a priority for all. We remain especially resolved to help Serbia to engage on the path of a European future. The integration of Serbia into the European family is important to the stability of the region.

In that regard, France reiterates its belief that Serbia can accelerate the progress of its rapprochement with Europe. It recalls that the European Union has

also expressed its readiness to assist Kosovo in its economic and political development by providing it with at a clear European prospect.

Lastly, France wishes to underscore the European Union's frequently reiterated resolve to play a lead role in stabilizing the region, particularly through the deployment of the European Union Rule of Law Mission throughout Kosovo. In that respect, France encourages the Serbian Government to adopt a constructive approach to the efforts undertaken by the European Union to contribute to peace and stability in the Western Balkans.

Mr. Hadjimichael (Cyprus): My delegation will vote in favour of the draft resolution contained in document A/63/L.2. We consider that, as a matter of principle, it is the prerogative of every State to seek an advisory opinion from the International Court of Justice on matters that affect its vital interests and that pertain to the fundamental principles of international law.

We believe that the unilateral declaration of independence by Kosovo's provisional institutions is an issue that merits legal clarity and that the Court can provide valuable guidance to States thereon through the exercise of its advisory function.

Our decision to support the draft resolution before us is based on and forms an integral part of a principled policy that the Republic of Cyprus has consistently advocated. It derives from our support for the rule of law and the international legal order and our conviction that adherence to international law is an indispensable element that determines the conduct of States in international relations.

My Government will continue to caution against the interpretation of international law according to political expediencies, and strongly to support the peaceful settlement of disputes in accordance with the United Nations Charter, including through the tools provided therein.

Mr. Natalegawa (Indonesia): Indonesia has been consistent in expressing its preference for the path of dialogue and diplomacy in resolving the question of the final status of Kosovo. That principled position remains.

Indonesia has also been steadfast in upholding the rule of law and the Charter of the United Nations in governing relations among States. We deem it of paramount importance to maintain the integrity of the United Nations Charter and international law. That principled position also remains. Paragraph 1 of Article 96 of the Charter provides that "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question".

For the aforementioned reasons, Indonesia will vote in favour of the draft resolution (A/63/L.2) currently before the General Assembly on the request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law.

Mr. Malmierca Díaz (Cuba) (*spoke in Spanish*): Cuba supports the legitimate right of any Member State to request an advisory opinion from the International Court of Justice. The draft resolution contained in document A/63/L.2, introduced by Serbia, is an expression of its legitimate right to request an advisory opinion of the Court concerning the unilateral declaration of independence by Kosovo.

Cuba believes that the draft resolution is in keeping with the purposes and principles of the Charter and international law. The draft resolution, moreover, is consistent with the positions adopted by the Non-Aligned Movement concerning the relationship between the General Assembly and the International Court of Justice. For those reasons, Cuba will vote in favour of draft resolution A/63/L.2.

Mr. Kumalo (South Africa): My delegation will vote in favour of draft resolution A/63/L.2. The International Court of Justice is an organ of this Organization and my delegation has full confidence that its decision will be important and inclusive of all opinions. While it may be true that 48 countries have recognized Kosovo, it is also important to note that 144 countries of this Assembly have not taken that decision. It is for that reason that we support the right of the Republic of Serbia to seek the advice of the International Court of Justice.

Mr. Oussein (Comoros) (*spoke in French*): We have every confidence in the impartiality of the International Court of Justice and the role it must play in international conflicts to preserve the primacy of international law. The Union of the Comoros is also attached to the fundamental principle of respect for the territorial integrity of States and condemns any form of

secession that would undermine the fundamental principles of the Organization. The Union of the Comoros will therefore vote in favour of draft resolution A/63/L.2.

Mr. Ballestero (Costa Rica) (*spoke in Spanish*): We have adopted a principled position of respect for the primacy of international law in conformity with the United Nations Charter. That is why we have supported and continue to support the path chosen by Serbia on the issue of Kosovo.

Everyone is aware of Costa Rica's position on Kosovo. As a State that is respectful of international law, we recognized their independence and have adopted a position that we deem legally valid. However, precisely because there are divergences in legal interpretations of the situation, we are convinced that an advisory opinion of the International Court of Justice would be desirable and bring clarity to the discussion.

As a State that respects international law, we will vote in favour of draft resolution A/63/L.2. We believe that the advisory opinion will certainly assist all Member States in making their own decisions.

Mr. Baghaei Hamaneh (Islamic Republic of Iran): The Islamic Republic of Iran would like to reaffirm its firm commitment to and high respect for the principles of the pacific settlement of disputes and the rule of law at the international level, as embodied in the United Nations Charter. My delegation's vote today in favour of draft resolution A/63/L.2 should be regarded as an indication of our principled commitment to that high principle.

Mr. Benmehidi (Algeria) (*spoke in French*): Algeria firmly supports the work of the International Court of Justice and believes in the primacy of international law in international relations. Moreover, draft resolution A/63/L.2 before us contains no elements of a political or controversial nature. Algeria believes it to be the prerogative of any State to request an advisory opinion of the Court, in conformity with Article 96 of the Charter. For those reasons, Algeria will vote in favour of draft resolution A/63/L.2.

The President (*spoke in Spanish*): We have heard the last speaker in explanation of vote before the voting. The Assembly will now take action on draft resolution A/63/L.2.

A recorded vote has been requested.

A recorded vote was taken.

In favour:

Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Belarus, Bolivia, Botswana, Brazil, Brunei Darussalam, Cambodia, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Eritrea, Fiji, Greece, Guatemala, Guinea, Guyana, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Liechtenstein, Madagascar, Mauritius, Mexico, Montenegro, Myanmar, Namibia, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Philippines, Romania, Russian Federation, Saint Vincent and the Grenadines, Serbia, Singapore, Slovakia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Timor-Leste, United Republic of Tanzania, Uruguay, Uzbekistan, Viet Nam, Zambia, Zimbabwe.

Against:

Albania, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, United States of America.

Abstaining:

Afghanistan, Andorra, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bulgaria, Burkina Faso, Cameroon, Canada, Colombia, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ghana, Grenada, Haiti, Hungary, Ireland, Israel, Italy, Japan, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Oman, Pakistan, Peru, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Saint Lucia, Samoa, San Marino, Saudi Arabia, Senegal, Sierra Leone, Slovenia, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Vanuatu, Yemen.

Draft resolution A/63/L.2 was adopted by 77 votes to 6, with 74 abstentions (resolution 63/3).

[Subsequently, the delegations of Ecuador, Ethiopia, the Lao People's Democratic Republic and the Bolivarian Republic of Venezuela advised the Secretariat that they had intended to vote in favour; the delegation of Tonga advised the Secretariat that it had intended to abstain.]

The President (*spoke in Spanish*): I call on the representative of Liberia on a point of order.

Mrs. Osode (Liberia): Liberia voted against the draft resolution; I repeatedly pressed the red button, but without result.

The President (*spoke in Spanish*): I have been informed by the Secretariat – which is so informing the representative of Liberia – that, in accordance with the provisions of Article 19 of the Charter, Liberia may not vote.

Before giving the floor to speakers in explanation of vote, may I remind delegations that explanations of vote are limited to 10 minutes and should be made by delegations from their seats.

I now call on representatives who wish to speak in explanation of vote on the resolution just adopted.

Sir John Sawers (United Kingdom): I regret the fact that the vote of Liberia could not be counted. It has been clear from the performance this morning that we are having technical problems in the General Assembly and it would have surely been right to have taken into account the fact that those technical problems extended to the vote as well as to the speakers.

In my statement in the debate, I set out a number of reservations on the part of the United Kingdom with regards to the draft resolution which has just been adopted. Those reservations led us to abstain in the voting, notwithstanding our long-standing support for the International Court of Justice.

It is striking that more Member States felt unable to support the resolution than voted in favour of it. We might infer from this that we are far from alone in having deep reservations. The United Kingdom welcomes the use of the advisory jurisdiction of the Court in appropriate cases, but we question the utility of the question being raised by Serbia. An advisory opinion cannot in itself determine Kosovo's status.

The position of the United Kingdom reflects our conviction that implementation of the comprehensive settlement proposed by an independent Kosovo under international supervision offers the best chance for Kosovo, Serbia and the region to achieve peace, stability and prosperity.

The United Kingdom also regrets the lack of substantive debates within the General Assembly on the draft resolution, including on the context and the formulation of the question and on the desirability of signalling, in the interest of fairness, that Kosovo should be allowed to present its arguments to the Court.

For all those reasons, the United Kingdom abstained in the voting on the resolution. Nevertheless, we recognize that the question which the General Assembly has decided to ask the Court raises significant issues of international law. We are confident of our legal position as a State that recognized the independence of Kosovo following the final status process, which was conducted pursuant to Security Council resolution 1244 (1999).

The United Kingdom looks forward to engaging constructively with the Court to assist in its considerations of those important issues. In parallel, we look to Serbia to engage constructively with the European Union on promoting stability in the region.

Mr. McNee (Canada): Let me begin by saying that Canada fully supports the role of the International Court of Justice as an instrument in the pacific settlement of disputes. Canada's vote today is not intended to detract from that important principle. It is our view, however, that the case raises highly political matters that are unsuitable for judicial review.

Moreover, Canada is of the view that the referral put before us in resolution 63/3 and the frame of reference it purports to set for the International Court of Justice are unlikely to result in an advisory opinion that could usefully contribute to fostering stability in the region. At a minimum, the resolution would have benefited from the inclusion of additional context to reflect the unique circumstances of the case. For those reasons, Canada abstained in the voting on the resolution.

Let me conclude by saying that Canada takes the view that, as a matter of basic fairness, Kosovo should be given the opportunity to present its case to the Court.

Mr. Pereyra (Peru) (*spoke in Spanish*): Peru recognized Kosovo on 22 February 2008, understanding that in this case there is a set of peculiar humanitarian circumstances that make it unique. In that regard, Peru's decision to recognize Kosovo constitutes a sovereign act of its foreign policy. In Peru's view, the legality of Kosovo's independence is, in the light of international law, fully justified by the peculiar circumstances that make this an exceptional case.

Peru reiterates its firm commitment to respect the norms and principles of international law and, in particular, the principle of peaceful settlement of disputes. Therefore, Peru reaffirms its emphatic backing of the International Court of Justice as the principal judicial organ of the United Nations, whether it is acting in its judicial capacity or whether recourse is made to it for an advisory opinion.

In the current case, Peru would like to highlight that Article 96 of the Charter clearly establishes that it is within the competence of the General Assembly, the Security Council or other organs or specialized agencies that are authorized by the General Assembly to request advisory opinions of the Court on legal matters. Thus, Peru respects Serbia's right to place such a request before the General Assembly. Given the particular circumstances of the case, the relevance of Kosovo's arguments and points of view must be considered. Lastly, Peru would, once again, emphasize that it will continue to act, in connection with this case, in keeping with its long tradition of respect for the norms and principles of international law, specifically those that govern peaceful settlement of disputes.

Mr. Matussek (Germany): Germany is strongly committed to the International Court of Justice and to the important role of international law in governing relations between States. However, any action by the General Assembly should contribute to the aim of advancing a just, lasting and stable settlement in Kosovo and in the Western Balkans as a whole. It is in this spirit that Germany has approached the request for an advisory opinion of the International Court of Justice on the specific issue raised today by the Republic of Serbia.

Again, in this vein, we do not believe that the resolution we have just adopted will help advance this cause. Moreover, we remain doubtful that an advisory opinion of the Court would serve the stated purpose, in affording guidance to the General Assembly on questions of international law relevant to the performance of its functions. In any case, Germany would trust that the Court will proceed according to the principle of fairness and will be hearing arguments as appropriate. At the same time and out of this respect for this Hall, we do not want to oppose the requests supported by a considerable portion of the General Assembly's members. It is for these reasons that Germany has chosen to abstain on the resolution.

Mr. Argüello (Argentina) (*spoke in Spanish*): The pillar of the United Nations system is international peace and security. The principal organ of the Organization with powers in this area is the Security Council. The whole of the collective security system is based on the fact that Members of the United Nations are duty bound to abide by the relevant resolutions of the Organization.

In the case of Kosovo, Security Council resolution 1244 (1999), for which Argentina voted in the affirmative, establishes clearly the legal and political parameters for the solution to the situation of the Kosovar minority in Serbia, ensuring the sovereignty and territorial integrity of Serbia, as well as the settlement of the disputes through a negotiated agreement that is mutually accepted by all parties. Argentina believes that that resolution is clear. Nevertheless, we join with the majority in agreeing to the request for an advisory opinion on this matter.

Ms. Lintonen (Finland): The International Court of Justice plays a crucial role in the peaceful settlement of disputes and in the promotion and application of international law. It has made considerable contributions to the development of international law, also through its advisory powers.

Finland has recognized the compulsory jurisdiction of the Court since 1958 without any reservations. We have actively participated in efforts to promote wider acceptance of the Court's jurisdiction. We have also supported the Secretary-General's trust fund to assist States in the settlement of disputes through the Court. Consistent support for the Court and the rule of law in international relations is an integral part of Finland's foreign policy.

However, Finland has abstained in the vote on the resolution. Our abstention is related to the subject of the resolution. Finland is among the 48 countries that have recognized Kosovo. While we do recognize that an advisory opinion on the subject of the request could have the potential of clarifying important legal questions, we are concerned about any developments that may create uncertainty as to the status of Kosovo and the instabilities in the region. We also regret that the Assembly has not decided to indicate, in the resolution, that Kosovo should be allowed to participate in the proceedings. In order for the court to deliver a fully reasoned opinion of this topic, all relevant actors should be able to present arguments on the subject.

Mr. Goledzinowski (Australia): Australia recognizes the right of every State to raise matters before the General Assembly for consideration by the Assembly. In particular, we respect the right of Serbia to bring this request for an advisory opinion from the International Court of Justice to the Assembly. Australia is a strong supporter of the International Court of Justice as the principal judicial organ of the United Nations and recognizes that the advisory jurisdiction of the Court is an important part of the international system established by the United Nations Charter. We assess the merits of requests for advisory opinions on a case by case basis. In this case, we were not convinced of the merits of having the Court consider this question and Australia was therefore unable to support this resolution. We consider that Kosovo should be universally recognized as an independent State in the interests of promoting peace and stability in the region. An advisory opinion would serve only to delay efforts for peace and stability.

What is important now is that the international community, in particular the United Nations and the European Union, continue efforts to bring about a lasting and peaceful future for Kosovo and the region and that the Serbian Government continues to engage with European and other parties in the interests of the stability and economic development of the region and its own future peace, stability and prosperity.

As the question is now being referred to the Court for an advisory opinion, we considered it appropriate for Kosovo to be represented in the proceedings and to present arguments in its own name. We would like to make a final point. In responding to Liberia's intervention, the President of the General Assembly indicated that Liberia cannot vote — at least that is the way it was rendered in English. I think it should be recorded that, in fact, Liberia did vote. The fact that the vote was not registered because of a technical difficulty is a matter of regret.

Ms. Blum (Colombia) (*spoke in Spanish*): Colombia has asked to take the floor to explain its abstention in the voting on resolution 63/3, introduced under agenda item 71, concerning the request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law.

In so doing, I wish to underscore, first of all, the importance that Colombia attaches to the jurisdiction granted by the Charter of the United Nations to the International Court of Justice to issue, upon request of the General Assembly, the Security Council and other bodies, advisory opinions on legal questions relating to the way in which they carry out their functions.

As a country that is respectful of international law, Colombia regards that function as a valuable tool for the work of the Organization. My country's abstention today, while recognizing that jurisdiction, is also the result of a close consideration of the historical circumstances that led to Kosovo's declaration of independence.

It should be recalled that a long series of events since the disintegration of the former Yugoslavia led to instability in the region that affected Kosovo, among others, necessitating sustained and broad efforts on the part of the United Nations, and the Security Council in particular, to promote a negotiated settlement among the parties.

Colombia has absolutely no doubt about its recognition of the independence of Kosovo. At the same time, my country takes the view that transparency and compliance with the existing international legal order are essential and that the International Court of Justice, by means of an advisory opinion, can make an appropriate contribution to that important issue.

Mr. Staur (Denmark): Denmark is a strong supporter of the International Court of Justice. Denmark has for more than 50 years accepted the Court's compulsory jurisdiction under Article 36 of the Statute of the Court. We have been a party to a number of contentious cases before the Court, thereby also in practice attesting to our belief in a rule-based

international legal order and our support for the principle of peaceful settlement of disputes by international judicial bodies. Likewise, we believe that advisory opinions may in some cases be an important tool for the relevant parties of the United Nations to seek clarification from the Court on legal questions.

After careful consideration, however, we decided to abstain in the voting on the Serbian proposal regarding an advisory opinion. We did so because we are not convinced of the utility of an advisory opinion in this case.

Denmark, together with 47 other countries so far, has recognized Kosovo, and our legal position on Kosovo's independence is well known and quite clear. We believe that stability, development and economic integration in a broader European context are crucial to Kosovo and to the entire region. In our view, those aims are best served through a common effort to address the real issues and challenges facing the region. While Denmark will, of course, continue to contribute to advancing prosperity and development in the region, we are not convinced that the coming proceedings will help to advance a forward-looking agenda focused on improving the everyday lives of the people in the western Balkan region.

With the adoption of resolution 63/3, we expect that the proceedings will be fair and comprehensive. We believe it to be very important that all parties, including Kosovo, be given adequate access so that they can present their views before the Court in their own name, and we expect that that will be the case. A full picture of the complex background of Kosovo's independence must be presented to the Court.

Mr. Wetland (Norway): We believe that requesting an advisory opinion from the International Court of Justice is acceptable and can serve to stabilize the region, even if there are also sound arguments against engaging the Court in a matter regarding a new State, given that most peoples enter statehood under difficult and often turbulent circumstances.

Nevertheless, we believe that the initiative taken by the Government of Serbia has the better potential over time to bring stability to the region and to its countries into European institutions. That is why we have chosen to support the proposal by Serbia.

Our support cannot, however, be interpreted as being incompatible with Norway's recognition of the Republic of Kosovo as an independent State. We trust that the Court will proceed according to established principles of judicial fairness and will be hearing and assessing all relevant arguments from all sides, including the Government of Kosovo.

Mr. Maurer (Switzerland) (*spoke in French*): We have always been attached to the promotion of the rule of law and international justice. That is why Switzerland has supported the International Court of Justice since its founding and considers it to be an important instrument for the peaceful settlement of disputes. Switzerland is also committed to peace, stability and socio-economic development in the region at issue. The present request for an advisory opinion could create uncertainties and undermine the stability and economic development of the region.

It is on the basis of those considerations that we decided to abstain in today's voting. Switzerland decided to recognize the independence of Kosovo after having carefully examined all relevant questions of international law. We are therefore convinced that the International Court of Justice, after having considered all the aspects at issue, will rule in favour of the conformity of the declaration of independence of Kosovo with international law. We call on all interested parties to be guided by their political and economic future in Europe.

Mr. Beck (Solomon Islands), Vice-President, took the Chair.

Mr. García González (El Salvador) (*spoke in Spanish*): El Salvador voted in favour of resolution 63/3 concerning the request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo by the Provisional Institutions of Self-Government of Kosovo was in accordance with international law.

El Salvador recognizes the option available to Member States, in keeping with Article 96 of the Charter of the United Nations, to request an advisory opinion from the International Court of Justice as a fundamental element of international law. The Court, in keeping with article 66 of its statute, shall issue an advisory opinion on the question raised in order to resolve the dispute by peaceful means, making use of the international community's legal and political instruments for that purpose.

In view of the juridical differences that exist between Member States, El Salvador has supported today's initiative and trusts in the value of the contribution that the International Court of Justice will be able to make to resolve such sensitive issues within the framework of international law as it applies to matters regarding the sovereignty and territorial integrity of States. Similarly, my delegation supports the role played by the General Assembly in the matter, since we feel that it is a juridical matter that falls under its jurisdiction. We reaffirm our commitment to working to strengthen the General Assembly, in keeping with the decision of the heads of State and Government adopted at the Millennium Summit.

Mr. Tow (Singapore): Singapore is sympathetic to the desire of the people of Kosovo for control over their own destiny. It is undeniable that the Kosovars have endured great suffering and terrible treatment in the past. After the crimes committed against the people of Kosovo in the early 1990s, many countries, including Singapore, expressed sympathy and support for some form of autonomy for Kosovo. However, Singapore has not, to date, supported Kosovo's unilateral declaration of independence, as we are concerned about the precedent that it could set in other parts of the world. Our strong preference is for the issue to be resolved peacefully by all parties concerned.

In that regard, Singapore voted in favour of resolution 63/3 as we believe that this is a highly complex situation and that there is value in clarifying the interpretation and application of international law. In that regard, the International Court of Justice is the appropriate international body to provide an advisory opinion on the legality of Kosovo's unilateral declaration of independence.

Mr. Hannesson (Iceland): Iceland supported the draft resolution (A/63/L.2) submitted by Serbia. In so doing, we departed from the position of some other States that, like us, have recognized Kosovo's independence. We do nonetheless share their viewpoints in respect to the developments that gave rise to Serbia's proposal. Iceland voted in favour of resolution 63/3 on the basis of the fundamental importance of international law, especially for small States, and with full confidence in and support for the view that the rules and principles of international law should always govern the behaviour of States.

The Acting President: For purposes of clarification with respect to the voting, I wish to draw the attention of the General Assembly to document A/63/350, which contains a letter from the Secretary-General addressed to the President of the General Assembly outlining those Member States that are in arrears under the terms of Article 19 of the Charter of the United Nations. I cite this document with respect to one Member in particular, in relation to its vote. The General Assembly took note of the document at its 1st meeting, on 16 September.

I now give the floor to the Minister for Foreign Affairs of Serbia to make a statement after the adoption of resolution 63/3.

Mr. Jeremić (Serbia): Serbia believes that this is a great day for this body and a great day for international law. Serbia wishes to thank the United Nations for having provided us with the opportunity to defend our case and to ask for support for our legal view in this Chamber. First and foremost, Serbia wants to thank the countries that have supported resolution 63/3. We wholeheartedly thank those countries that have demonstrated their solidarity with a course of action that in our opinion, upholds the very foundational principles of international law and the Charter of the United Nations. We look forward to working constructively with the United Nations and all Member States regarding the process to determine the future status of our southern province.

The Acting President: The General Assembly has concluded this stage of its consideration of agenda item 71.

The meeting rose at 12.10 p.m.